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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,109	04/04/2001	Fumihiko Nishio	7217/64311	2753

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EXAMINER

ZHONG, CHAD

ART UNIT PAPER NUMBER

2152

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/826,109

Applicant(s)

NISHIO ET AL.

Examiner

Chad Zhong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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FINAL ACTION

1. Applicant's arguments, see pages 9-11 of applicant's remarks, filed 12/09/2005, with respect to the rejection(s) of claim(s) 1, 3-9 under 35 USC 102(e) have been fully considered and are found not persuasive. Therefore, the rejection has been maintained. This action is final.

Claims 1, 3-9 are presented for examination; claims 2 is cancelled; claims 1, 3-9 are currently amended.

2. It is noted that although the present application does contain line numbers in specification and claims, the line numbers in the claims do not correspond to the preferred format. The preferred format is to number each line of every claim, with each claim beginning with line 1. For ease of reference by both the Examiner and Applicant all future correspondence should include the recommended line numbering.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371 (c) of this title before the invention thereof by the applicant for patent.

4. Claims 1, 3-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Colby et al. (hereinafter Colby), 6,625,643.

5. As per claim 1, Colby teaches an information providing apparatus for delivery of content data, comprising:

content data input means for operation by a user to input content data (Col. 27, lines 65 –

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Col. 28, lines 17, the administrators input commands as to how to schedule the various requests made by end users and publishers);

storing means for storing the content data provided by the content data input means (Col. 28, lines 1-5, wherein the administrators will enter reservation commands, these commands will be stored and interpreted by the scheduler); and

delivery designating means for designating a delivery condition including one of a transmission band (the transmission band is the capacity band as allocated by the administrator, see for example, Col. 27, lines 31-37; Col. 28, lines 1-18, the Publisher users can potentially be the administrator, Col. 22, lines 17-43) and a transmission medium (Col. 28, lines 1-25; Col. 23, lines 23-26; Col. 29, lines 45 – Col. 30, lines 5; Col. 30, lines 40-45) to be used for delivering the content data stored in the storage means (Col. 28, lines 24-29, where the stored information is scheduled to be send out according to the parameters set by the administrator/user); and

a communication control unit (the scheduler is the control unit, Col. 28, lines 5-10) for receiving a bi-directional network delivery condition data corresponding to the delivery condition to be designated by the delivery designating means (Col. 28, lines 5-30, wherein the administrator input parameters are the delivery conditions through a web based interface, the delivery conditions are being sent to the scheduler for appropriate scheduling of the content delivery, furthermore, the network itself in Colby is bi-directional, takes the input from users and manipulates the output delivery to users) and supplying the received delivery condition data to the delivery designating means (the system will schedule an appropriate time for the content delivery, see for example, Col. 29, lines 15-27) for use in designating the delivery condition, including one of the transmission band and the transmission medium (Col. 28, lines 5-17).

7. As per claim 3, Colby teaches the delivery condition data for use by the delivery designating means in designating the delivery condition is a size of an audience for the content data to be delivered by the communication control unit (Col. 5, lines 25-30, wherein the

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maximum amount of clients the system can handle; additionally, the amount of bandwidth available to a particular broadcast is directly proportional to the amount of users the publishers wish to reach, the scheduler system must adjust to this variable parameter accordingly to ensure proper bandwidth is allocated, see Col. 27, lines 30-45).

8. As per claim 4, Colby teaches the data for use in designating the delivery condition is a delivery cost (Col. 5, lines 25-30, wherein the delivery cost is in terms of bandwidth; Col. 27, lines 30-35, comparing free or paid events).

9. As per claim 5, Claim 5 is rejected for the same reasons as rejection to claim 1 above.

10. As per claim 6, the claim is rejected for the same reasons as claim 1 above. In addition, Colby teaches a delivering apparatus for delivering content data, comprising:

first communicating means for receiving from an information provider content data (content data here are the administrator commands to control the scheduler, see Col. 28, lines 1-18) including a delivery condition (administrator provides the delivery condition, Col. 28, lines 1-18) including one of a transmission band (Col. 28, lines 5-18) and a transmission medium set by the information provider (Col. 28, lines 1-25; Col. 23, lines 23-27, the Publisher users can potentially be an administrator, Col. 22, lines 17-43; Col. 29, lines 45 – Col. 30, lines 5; Col. 30, lines 40-45);

storing means for storing the content data (the content data are stored in the form of webpages on the server, Col. 28, lines 20-30; commands from the administrator as stored and interpreted by the scheduler, Col. 28, lines 1-5);

transmitting means for delivering the content data to a receiving terminal unit (Col. 28, lines 15-20; Col. 27, lines 31-37);

second communicating means for receiving user profile information from the receiving

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terminal unit over a bi-directional network (Col. 26, lines 30-35, wherein publishers have login and password, or an account, further, the account can be an administrator account, see for example, Col. 22, lines 25-43);

profile storing means for storing the user profile information received by said second communicating means (Col. 22, lines 25-43, where the input information are stored on the system when compared with previously stored profile data for verification purposes);

charging process controlling means for calculating a cost corresponding to the delivery of the content data according to the received delivery condition (Col. 26, lines 24-29, lines 40-45; Col. 27, lines 30-35); and

band controlling means for controlling a band used for delivering the content data (Col. 28, lines 5-18) based on the delivery condition set by the information provider, (Col. 28, lines 1-18)

wherein the charging process controlling means pre-calculates a size of an audience for the content data corresponding to the user profile information stored in the profile storing means (Col. 5, lines 25-30, wherein the maximum amount of clients the system can handle; additionally, the amount of bandwidth available to a particular broadcast is directly proportional to the amount of users the publishers wish to reach, the scheduler system must adjust to this variable parameter accordingly to ensure proper bandwidth is allocated, see Col. 27, lines 30-45), calculates the cost corresponding to the delivery of the content data (Col. 27, lines 30-35; Col. 28, lines 5-10), and informs the information providing provider of the cost (Col. 28, lines 5-20, wherein the cost of delivery comprising of calculation of availability of bandwidth requirements, the cost of the delivery is displayed to the administrators).

11. As per claim 7, Colby teaches a delivering apparatus for delivering content data, comprising:

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first communicating means for receiving content data from an information provider (content data here are the administrator commands to control the scheduler, see Col. 28, lines 1-18) including a delivery condition (administrator provides the delivery condition, Col. 28, lines 1-18) including one of a transmission band (Col. 28, lines 5-18) and a transmission medium set by the information provider (Col. 28, lines 1-25; Col. 23, lines 23-27, the Publisher users can potentially be an administrator, Col. 22, lines 17-43; Col. 29, lines 45 – Col. 30, lines 5; Col. 30, lines 40-45);

storing means for storing the content data (the content data are stored in the form of webpages on the server, Col. 28, lines 20-30; commands from the administrator as stored and interpreted by the scheduler, Col. 28, lines 1-5);

transmitting means for delivering the content data to a receiving terminal unit (Col. 28, lines 15-20; Col. 27, lines 31-37);

second communicating means for receiving user watching/listening history from the receiving terminal unit over a bi-directional network (the administrators is able to view the condition of the network from the administration interface located in the scheduler, see Col. 28, lines 1-5);

watching/listening history storing means for storing the user watching/listening history received by the second communicating means (Col. 28, lines 1-5);

charging process controlling means for calculating a cost corresponding to the delivery of the content data according to the received delivery condition (Col. 26, lines 24-29, lines 40-45; Col. 28, lines 5-10; Col. 27, lines 30-35); and

band controlling means for controlling a band of a network used for delivering the content data (Col. 28, lines 1-18) based on the delivery condition set by the information provider (Col. 28, lines 1-18), and

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wherein the charging process controlling means pre-calculates a number of audiences for the content data corresponding to the watching (Col. 5, lines 25-30, wherein the maximum amount of clients the system can handle; additionally, the amount of bandwidth available to a particular broadcast is directly proportional to the amount of users the publishers wish to reach, the scheduler system must adjust to this variable parameter accordingly to ensure proper bandwidth is allocated, see Col. 27, lines 30-45), listening history stored in the watching/listening history storing means (where history information are stored in tables of the database, see Col. 21 and 22 for examples), calculates the cost corresponding to the delivery of the content data, and informs the information provider of the cost (Col. 27, lines 30-35; Col. 28, lines 5-20, wherein the administrator is informed of the cost of broadcasting data).

12. As per claims 8-9, Claims 8-9 are rejected for the same reasons as rejection to claims 6-7 above respectively.

Response to Arguments

13. Applicant's remarks filed 12/09/2005 have been considered but are found not persuasive in view of the new grounds of rejection necessitated by Applicant's amendment.

14. In the remark, the Applicant argued in substance that Colby fails to disclose or suggest "designating a delivery condition set by the user including one of a transmission band and a transmission medium for delivering the content data".

In response to Applicant's arguments, Examiner asserts that Colby teaches the users designating the capacity bands as part of the parameters sent to the scheduler, where publishers designation of free event results in scheduler limiting system bandwidth, see Col. 27, lines 31-37; Col. 28, lines 1-18; additionally, the transmission medium are the different paths designated by

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users to deliver data packets , see for example, Col. 23, lines 20-30; Col. 19, line 65 – Col. 20, line 2; Col. 29, lines 45 – Col. 30, lines 5; Col. 30, lines 40-45.

15. In the remark, Applicant argued in substance that Colby does not describe the delivery designating unit contained in the information providing apparatus as in the presently claimed invention.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., delivery designating unit contained in the information providing apparatus) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

16. **THIS ACTION IS MADE FINAL.** Applicant is reined of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents and publications are cited to further show the state of the art

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with respect to "INFORMATION PROVIDING APPARATUS, INFORMATION PROVIDING METHOD, DELIVERING APPARATUS, AND DELIVERING METHOD".

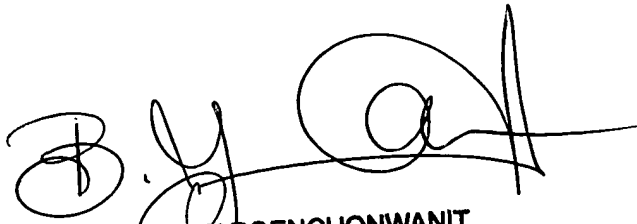
- i. US 6405239 Addington et al.
- ii. US 6446108 Rosenberg et al.
- iii. US 6219700 Chang et al.
- iv. US 6512754 Feder et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chad Zhong whose telephone number is (571)272-3946. The examiner can normally be reached on M-F 7:15 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JAROENCHONWANIT, BUNJOB can be reached on (571)272-3913. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CZ
February 21, 2006



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SUPERVISORY PATENT EXAMINER